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Extraordinary Legal Measures and Their Application as a Response of States to the First Wave of the COVID-19 Pandemic

Abstract: The topic of the present article is the response of states to the first wave of the COVID-19 pandemic by using extraordinary legal measures provided for in their constitutions and legislation. By reference to the research project's findings, the authors characterise the legal solutions in selected jurisdictions and attempt to demonstrate the relationship between the application of emergency measures and the specific political system of states. By doing so, the authors consider such factors as the territory, population, or type of political regime.

Keywords: *COVID-19 pandemic, the states of emergency, constitutional law*

1. Introduction

1.1. The declaration of a pandemic by the World Health Organization (WHO) in March 2020 was unprecedented for most states, requiring a response of a special nature. As part of this study, the authors refer to the findings of the research project “*Restrictions on civil rights and freedoms during the Covid-19 pandemic*”¹; devoted to the situation in European states [incl. Austria (Piotr Czarny, PhD), Belgium (Anna Krzynówek-Arndt, PhD), Belarus (Assoc Proc.

¹ The project financed by the Institute of Justice. The studies on the legal situation of the individual in the countries indicated have been collected in a multi-author monograph published at the end of 2020 (Dobrzeniecki & Przywora, 2021).

Ksenia Kakareko, Prof. Jacek Sobczak), the Czech Republic (Mateusz Żaba, PhD), Denmark (Marcin Grzybowski, PhD), France (Assoc. Prof. Piotr Szewdo, Lena Helińska Jan Woźniak), Spain (Assoc. Prof. Marta Osuchowska), the Netherlands (UP Assoc. Prof. Grzegorz Krawiec), Germany (Aleksandra Syryt, PhD), Sweden (UJD Assoc. Prof. Bogusław Przywora, Aleksander Wróbel, PhD), Ukraine, Hungary (Dominik Héjj, PhD), the Great Britain (Maria Moulin-Stożek, PhD, LL.M), Italy (NCU Assoc. Prof. Maciej Serowaniec; Katarzyna Jachimowicz, PhD)] and non-European states [Brazil and Peru (Assoc. Prof. Marta Osuchowska), China (Igor Szpotakowski, MA), Israel (Anna Rataj, PhD, LL.M.), Canada (Assoc. Prof. Grzegorz Pastuszko), Mexico (UP Assoc. Prof. Łukasz Czarnecki), USA (Aleksandra Syryt, PhD, Maria Kalinowska, MA, LL.M)]. The undertaken analysis covered the period from the beginning of the pandemic until September 2020. This choice of research sample allowed for relating the adopted legal solutions and the degree of pandemic threat to different political forms, legal culture, territory, etc. The present article complements the findings made by the authors in the study: *Legal basis for introducing restrictions on human rights and freedoms during the first wave of the COVID-19 Pandemic* (Przywora & Dobrzeniecki, 2021, pp. 43–65).

1.2. The analysis of the regulations of individual states leads to the following conclusions. One can distinguish a group of states which, despite the threat, operated within the framework of ordinary regulations specified in constitutions and acts, and states where states of emergency were declared², and authorities were granted special powers (Dobrzeniecki, 2018, pp. 33–34; Banaszak, 2012; Steinborn, 2016; Radziejewicz, 2019; Pecyna, 2020, pp. 23–37; Florczak-Wątor, 2020, pp. 5–22; Sroka, 2020; Szmulik & Szymanek, 2020, pp. 9–20). As a result, departures from the standards of “regular” civil rights protection were allowed (Wojtyczek, 1999; 2018; Garlicki, 2001; Niżnik-Mucha, 2014; Radajewski, 2014; Florczak-Wątor, 2018). In a state of emergency, the scope of an individual’s duties, guarantees of rights and freedoms, the structure of social and economic relations and the manner of bearing responsibility by public officials change (Domain, 2006, p. 27; Özbudun & Turhan, 1995, pp. 11–30). The minimum legal requirement of a state of emergency in a liberal state is its prospectivity, the presence of an *a priori* and *a posteriori* control procedures and the temporary nature of extraordinary solutions (Questiaux, 1982, p. 10). The purpose of applying such legal measures is to enable the quickest possible return to a normal.

A comparative analysis of constitutional regulations in several states leads to the conclusion that most modern constitutions entrust the centre of executive power with the task of intervening in conditions of grave danger (Rossiter, 1948, p. 12). This authority can address

² Clinton L. Rossiter identified the principles governing the state of emergency in a democratic liberal state. These were, among others, the following requirements: the use of absolutely necessary measures to protect the established constitutional order and their temporary nature aimed at restoring the previous state of political relations (Watkins, 1940, p. 329; Brzeziński, 2007; Prokop, 2012; Eckhardt, 2012; Karpiuk, 2013; Kurzepa, 2017; Kardas, 2020; Tuleja, 2020; Löhnig et al., 2021).

these dynamically changing crises as quick as possible. It adopts an often-decisive regulations in an expedited procedure, having the appropriate logistic, organisational and information facilities. It was fundamental to adapt the restrictions appropriately to the degree of risk. Among the most typical restrictions on human freedoms and rights are those concerning: freedom of economic activity, freedom of assembly, personal freedom, freedom of movement, freedom of religion.

1. State's Response to the First Wave of the COVID-19 Pandemic

2.1. *Legal measures applied to counter the pandemic in the first period of its duration were not uniform either in European or non-European states*

2.1.1. For example, in Hungary, on March 11, 2020, the prime minister issued a decree on the declaration of the state of danger (a *veszélyhelyzet*)³ under Article 53 of the Fundamental Law. Restrictions were introduced in the scope of *inter alia*, mobility, border crossing, schools and cultural institutions were also closed. Similarly, on March 12, 2020, the Government of the Czech Republic declared a state of emergency (*nouzovýstav*)⁴, under Article 5 and Article 6 of the Constitutional Act of April 22, 1998, on the security of the Czech Republic⁵. It was assumed that the state of emergency was to last for 30 days. However – due to the escalation of the pandemic – it was prolonged. In Spain, the Council of Ministers declared (March 14, 2020), by means of the royal decree, the state of alarm (*estado de alarma*) for 15 days, which was extended by subsequent royal decrees. In turn, in France, the parliament, by adopting the act on declaring the state of health emergency (March 23, 2020)⁶, granted the Government extensive right to take action to counter the pandemic (the ordinances). In Germany, state of emergency was declared (under Article 91 of Basic Law for the Federal Republic of Germany [*Grundgesetz*]), only in Bavaria and the city of Halle in Saxony-Anhalt where disaster situations (*Katastrophenfall*) were declared⁷. In Poland, an epidemic emergency has been declared state-widely, followed by a state of epidemy. It stems from the constitutional regulations that counteracting a pandemic constitutes the obligation of public authorities (Article 68, paragraph 4 of the Constitution of the Republic of Poland).

³ Hungarian Government Order No. 40/2020 of March 11 concerning the announcement of the state of emergency, *A Kormány 40/2020.III. 11). Korm. rendelele veszélyhelyzet kihirdetéséről*, „Magyar Közlöny” 2020, no. 39.

⁴ Usnesení vlády České republiky ze dne 12.03.2020, č. 194; 69/2020 Sat.

⁵ Ústavní zákon ze dne April 22, 1998 on the safety of the Czech Republic, Zák. č. 110/1998 Sb.

⁶ Loi n° 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de COVID-19, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746313&categorieLien=id>

⁷ <https://www.halle.ihk.de/mini-startseiten/informationen-zum-coronavirus/hilfe-fuer-unternehmen/stichwort-katastrophenfall-4736590>

The implementation of this may be carried out by various means. Whether the threats associated with the COVID-19 pandemic were sufficient to declare one of the constitutional states of emergency remains a contentious issue among constitutionalists.

2.1.2. A different treatment is required for the State of Israel, which has operated in the conditions of a specific state of emergency from the very beginning. In response to the new threat, the executive used emergency regulations provided for in Israeli law in the event of the declaration of a state of emergency. Since the pandemic's beginning, the Government was authorised to issue these laws without obtaining special rights. Although the Knesset – as the legislature – could repeal emergency regulations, it turned out to be *de facto* impossible due to the specific political situation in the initial phase of the pandemic. The centralised system of the executive facilitated the implementation of measures, incl., in the case of quarantine. The issue of parliamentary supervision over the Government's exercise of extraordinary powers in the fight against the pandemic has become the subject of decisions of the Supreme Court. Two important judgements were issued on this matter. They aimed to prevent a situation in which the Knesset would not be able to exercise its control over the executive to achieve the particular political goals of specific individuals and groups. In the first judgment, the Supreme Court ordered the Chairman to convene the parliament⁸, whereas it set the date of the convocation by means of the second judgement⁹.

2.1.3. The policy of the People's Republic of China (China), where cases of COVID-19 infections (in Wuhan, the capital of Hubei province) were first identified, can be mentioned as a specific example of a pandemic counteraction policy conducted without the use of the state of emergency (Hengbo et al., 2020, p. 1). The authorities used the experience gained in the fight against the SARS-CoV epidemic in 2002–2003. Due to the specific nature of this state's legal system, the regulations concerning restrictions on the exercise of rights and freedoms do not appear in constitutional regulations but at the level of laws and executive acts. The first level of threat was announced in China, albeit with a significant delay, based on the *Emergency Response Law* and its executive acts. The authorities were granted rights to apply restrictions on rights and freedoms. In the second stage of counteracting the COVID-19 pandemic, the central government of China imposed a lockdown in Wuhan. There was a suspension of public transport, the airport, railway station and highways were closed, citizens were banned from entering and leaving Wuhan¹⁰.

⁸ Judgement of the Supreme Court of March 23, 2020 in the case of *The Movement for Government Quality in Israel (and others) v. Knesset Speaker (and others)*, case no. HCJ 2144/20.

⁹ Judgement of the Supreme Court of March 25, 2020 in the case of *The Movement for Government Quality in Israel (and others) v. Knesset Speaker (and others)*, case no. HCJ 2144/20.

¹⁰ The announcement of the Wuhan City Authority is available in Chinese at: http://jyh.wuhan.gov.cn/pub/whs_70/zwgk/tzgg/202003/t20200316_972434.shtml

2.1.4. A phenomenon worth noting was the “local” differentiation of legal measures applied within a state to counteract the COVID-19 pandemic. It would often take place in larger states, especially in federal systems. For example, in the United States of America, the government did not take extensive legal action in the first phase of the pandemic. However, on January 31, 2020, *The Secretary of Health and Human Services* declared a state of public health emergency (under Article 319 of *The Public Health Service Act*, 42 USC 247d). It was not until March 13, 2020 that the US President issued *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease COVID-19 Outbreak*¹¹. In California – which had the highest number of confirmed cases in the United States and the highest number *per capita* as of September 28, 2020 – the governor declared a state of emergency. On the other hand, the governor of Texas declared a state of disaster¹² by the declaration of March 13, 2020, under the provisions of the *Texas Government Code* (Section 418.012). This declaration was renewed through a series of subsequent proclamations. Commissioner of Public Health in Texas issued a *Declaration of a public health disaster in the state of Texas*. In turn, on March 7, 2020, the governor of the State of New York, based on the right granted by the Constitution and the law of the State of New York (Section 29-A¹³), issued executive order No. 202¹⁴ in which he declared a state-wide disaster emergency.

In Canada, the legal basis for actions taken by public authorities was the provincial public health and safety acts and civil emergency measures acts¹⁵. In connection with the declaration of the state of emergency, the governments of provinces or other territories were granted additional powers to take appropriate anti-crisis measures (e.g., the possibility of introducing restrictions on mobility) (Dawson, 2020).

The specific approach to fighting the pandemic, as focused on financial matters, was presented by the Brazilian authorities, where the state of calamity (*estadode calamidade*) was declared. The federal public administration has been authorised to make extraordinary expenses not foreseen in the budget forecast. In turn, the president of Mexico did not use the emergency powers provided for in the constitution, and only on March 27, 2020,

¹¹ <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

¹² https://gov.texas.gov/uploads/files/press/DISASTER_covid19_disaster_proclamation_IM-AGE_03-13-2020.pdf

¹³ New York State Senate website, <https://www.nysenate.gov/legislation/laws/EXC/29-A>

¹⁴ Text available at: https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.pdf

¹⁵ On March 15, 2015 states of emergency were declared in Calgary and Red Deer, Alberta province. On March 17, 2020 emergency of public health was declared in British Columbia, under Public Health Act, the next day – a provincial state of emergency under Emergency Program Act of 1996 r. In addition to these initiatives, it is important to point out the activities of the authorities of several districts such as Vancouver, New Westminster, Delta, Surrey, and Richmond. They consisted in the introduction of emergency procedures (Graveland, 2020); Public Health Act assented to May 29, [SBC 2008] chap. 28; Emergency Programme Act, BC Reg. 477/94; OC 1498/94.

issued a decree declaring emergency actions in areas affected by a threat to public health¹⁶. Subsequently, the *Consejo de Salubridad General* declared a health state of emergency (*estado de emergencia sanitaria*)¹⁷.

In Peru, during the COVID-19 pandemic, legal solutions were implemented that had been tried in similar cases in the past. First of all, it should be indicated on the decrees that extended the state of health emergency and state of emergency, and implemented changes within the existing restrictions. These acts took various forms depending on the purpose and nature of the regulations (Furnish, 1971, pp. 91–120). One should note: legislative decree (*Decreto Legislativo*), emergency decree (*Decreto de Urgencia*) and supreme decree (*Decreto Supremo*). The relevant government offices also issued ministerial decisions (*Resolución Ministerial*) and directorial decisions (*Resolución Directoral*). The statewide state of emergency (*Estado de Emergencia Nacional*) was declared on March 15, 2020. This state was extended many times, and the regulations governing it were modified.

2.1.5. In certain states, main legal instruments used to counteract the pandemic were statutory acts and delegated legislation.

2.1.5.1. Some constitutions did not provide for a state of emergency at all. The constitutional solutions in Italy could serve as an example. The Constitution of the Republic does not recognise this type of institution, nor does it provide for a general suspension or restriction of fundamental rights in a situation of internal danger. Article 77 of the Constitution empowers the Council of Ministers in case of necessity and urgency to issue decree-law (*decreti-legge*) under its responsibility, without receiving a prior delegation from parliament. The Government is obliged to present the regulation on the same day to the chambers, which should adopt the so-called conversion law (*Legge di conversione*) to convert a regulation into law. In addition to the mandates of the National Health Service Act¹⁸ and Civil Protection Code¹⁹, this form of law-making was used by the government and local administration to issue regulations during a pandemic (Urbaniak, 2020, p. 11).

¹⁶ Decreto por el que se declaran acciones extraordinarias en las regiones afectadas de todo el territorio nacional en materia de salubridad general para combatir la enfermedad grave de atención prioritaria generada por el virus SARS-CoV-2 (COVID-19), „Diario Oficial de la Federación”, http://www.dof.gob.mx/nota_detalle.php?codigo=5590673&fecha=27/03/2020

¹⁷ Acuerdo por el que se declara como emergencia sanitaria por causa de fuerza mayor, a la epidemia de enfermedad generada por el virus SARS-CoV-2 (COVID-19), „Diario Oficial de la Federación”, 30.03.2020, http://www.dof.gob.mx/nota_detalle.php?codigo=5590745&fecha=30/03/2020

¹⁸ Legge 23 dicembre 1978, n. 833. Instituzione del serviziohandio nazionale. (GU Serie Generale n. 360 del 28-12-1978 – Suppl. Ordinario)

¹⁹ *Decreto legislativo 2 gennaio 2018, n. 1. Codice della protezione civile. GU Serie Generale n. 17 del January 22, 2018*

2.1.5.2. Examples of Western European states where no state of emergency was introduced during the first wave of the COVID-19 pandemic are also the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, Austria and Belgium, and Denmark and Sweden are among the Scandinavian states.

In the Kingdom of the Netherlands, at the time of the outbreak of the pandemic, there existed provisions regulating cases emergency in the field of public health, including, *inter alia*, in Public Health Law of October 9, 2008 (*Wet publieke gezondheid*) (Staatsblad, 2008, p. 460). The law of the United Kingdom of Great Britain and Northern Ireland also provides provisions relating to the issue of mass infections. Under the Public Health (Control of Disease) Act of 1984, the competent minister could, through regulations, implement provisions to prevent, protect, control or ensure a response from the public health service to the occurrence or spread of an infection or contamination in England and Wales²⁰. The primary act determining the extent of the exercise of civil rights during the pandemic period in England was Health Protection (Coronavirus Restrictions) Regulations²¹. The Regulations were issued on March 26, 2020, and entered into force as of the same day. Similar legal solutions have been adopted for Wales, Scotland and Northern Ireland.

In Austria, the provisions of the acts on combating infectious diseases were applied, and the most important was the Federal Epidemic Law dated back to 1913 (*Bundesgesetz über die Verhütung und Bekämpfung übertragbarer Krankheiten*)²². The first pandemic prevention efforts at the federal level were based on this law. On February 28, 2020 the Federal Minister of Social Affairs, Health, Care and Consumer Protection issued a regulation under which the preventive measures provided for in the Epidemic Act with respect to the restriction of business activities could also be applied in the event of a COVID-19 pandemic. The Federal Constitutional Court referred, *inter alia*, to the requirement of specificity in the statutory legal basis for the restrictions imposed by the regulation in three noteworthy judgments of July 14, 2020 (G 202/2020, V 411/2020, V 363/2020). The Court recognised a pandemic as a particular circumstance and pointed out that the regulation implementing limitations complies with the requirement of specificity when it allows a certain freedom of assessment and formulation of forecasts by an authorised body. In the opinion of the Court, the authorities should, in each case, take into account fundamental rights, and their

²⁰ An Act to consolidate certain enactments relating to the control of disease and to the establishment and functions of port health authorities, including enactments relating to burial and cremation and to the regulation of common lodging-houses and canal boats, with amendments to give effect to recommendations of the Law Commission, June 26, 1984, UK Public General Acts, 1984 Chapter 22, <https://www.legislation.gov.uk/ukpga/1984/22/section/45C>.

²¹ Health Protection (Coronavirus Restrictions) (England) Regulations 2020, 26 March 2020, Statutory Instruments, 2020 N. 350, <https://www.legislation.gov.uk/uksi/2020/350/contents/made>

²² Bundesgesetzblatt für die Republik Österreich of 1950 r., item 186 with amendments.

limitations are allowed when they serve the public interest and comply with the principle of proportionality²³.

In the Kingdom of Belgium, the first emergency measures at the federal level were implemented under the ministerial order of March 13, 2020. On March 27, 2020, the Chamber of Representatives adopted two laws empowering the King to take the measures necessary to prevent the spread of the COVID-19 pandemic²⁴. In addition, a requirement was introduced that provisions issued based on *pouvoirs spéciaux* were adopted by the entire Council of Ministers (*par le Roi, délibéré en Conseil des ministres*) and approved by parliament within one year as of the date of entry into force. In practice, the Federal Government has been given extensive powers to mitigate the adverse effects of the pandemic. Based on the aforementioned statutory delegation, it was issued, *inter alia*, royal decree (*arrêté royal*) of April 6, 2020, authorising the governing bodies of municipalities to introduce additional administrative sanctions for violation of regulations.

In Denmark, the parliament (*Folketing*) approved the government's draft amendment to the law on counteracting epidemics and infectious diseases. Based on this amendment (entered into force as of March 17, 2020), the government, health and justice ministers, and relevant government agencies were granted additional regulatory powers. In Sweden, on the other hand, the 2010 amendment to the Instrument of Government (*Regeringsformen*)²⁵ created the basis for introducing restrictions on citizens' rights and freedoms in connection with the threat of the "plague" in the acts of law. If the parliament of the Kingdom of Sweden is unable to pass an amendment to the law in the form of adding a specific disease entity to the list of infectious diseases on an expedited basis, special powers have been granted to the government in this regard. In Sweden, recommendations and guidelines aimed at citizens on a soft law basis have been used extensively.

2.1.5.3. We end the description on the examples of states from Eastern Europe, i.e., Ukraine and Belarus. In Ukraine, since March 2020, restrictive regulations limiting constitutional rights and freedoms were implemented. The President of Ukraine has issued a presidential decree approving the decision of the National Security and Defence Council of Ukraine on immediate measures to ensure national security in the conditions of the outbreak of acute respiratory disease of COVID-19. On the other hand, within the first months of the pandemic in Belarus, the government even denied the urgent need to change the regula-

²³ Verfassungsgerichtshof Österreich, https://www.vfgh.gv.at/medien/Covid_Entschaedigung_Betretungsverbot.de.php

²⁴ Loi du 27 mars 2020 habitant le Roi à prendre des mesures de lutte contre la propagation du coronavirus, <http://www.ejustice.just.fgov.be/eli/loi/2020/03/27/2020040937/justel>; Loi du 27 mars 2020 habitant le Roi à prendre des mesures de lutte contre la propagation du coronavirus COVID-19 (II), (*Moniteur belge*, 30 mars 2020) <http://www.ejustice.just.fgov.be/eli/loi/2020/03/27/2020040938/justel>

²⁵ „The Svensk författningssamling” 2010:1408 Lag om ändring i regeringsformena.

tions or implement restrictions. The authorities did not declare a state of emergency, nor practically any administrative restrictions intended to protect citizens' health. A regulation of the Council of Ministers of February 5, 2020 on the organisation of preventive actions (О ведении ограничительного мероприятия²⁶) was issued ordering that people who came to Belarus from states where cases of infection with COVID-19 have been reported and not self-isolated before the end of the period of self-isolation crossed the state border. The regulation of the Council of Ministers of the Republic of Belarus of April 8, 2020²⁷ imposed self-isolation on people infected with COVID-19 and those who had contact with the infected persons. Preventive measures were implemented and revoked by the decision of the Council of Ministers of the Republic of Belarus, local executive and administrative bodies at the request of the Deputy Minister of Health – Chief State Sanitary Doctor of the Republic of Belarus, and locally on the territory of oblasts, cities and districts at the request of chief state sanitary doctors of these areas.

3. Summary

At present, the typical consequence of an emergency for the modern liberal state is the application of the legal norms provided for such circumstances, laid down in the Constitution or Legal Act. They cover various public threats and define the manner of the planned use of the state apparatus to deflect the danger. Consequently, it leads to a state of emergency characterised by extraordinary and transitional legal status. Its introduction officially takes place after fulfilling certain formal conditions. The law determines how the state apparatus's normal functioning and the relationship between citizens and the state are changed. Legal systems provide different varieties and types of state of emergency depending on the duration, reasons for implementation and the territorial coverage of particular threats. In the second half of the XX century, this field was internationalised. The discourse on emergency states and exceptional modes of governance has been redrafted using categories derived from derogation regimes of particular international human rights instruments. In this way, a specific international law's emergency constitution has been established, which defines universally accepted legal standards in this field. On the other hand, using the law as an instrument for dealing with an emergency situation may have other types of consequences. Extensive juridification of social relations, which is a typical consequence of wars and other

²⁶ Постановление Совета Министров Республики Беларусь от 25.03.2020 № 171 „*of мерах по предотвращению завоза и распространения инфекции, вызванной коронавирусом COVID-19*”, „Национальный правовой Интернет-портал Республики Беларусь” 03.27.2020, 5/47931 with later. d.

²⁷ Постановление Совета Министров Республики Беларусь от 8 апреля 2020 г. N 208 „*о введении ограничительного мероприятия*”, „Национальный правовой Интернет-портал Республики Беларусь”, 9.04.2020, 5/47975.

severe crises, causes the risk of unnoticeable, gradual blurring the boundaries between what is ordinary and extraordinary.

As a result, legal solutions, initially referring to extraordinary security threats, may penetrate the legislation applying in a normal situation. In effect of juridification, the state obtains an instrument for management in the emergency, the use of which in extreme cases may lead to the scenario of a “permanent emergency state”. Legislators use advanced data processing and transmission technologies to overcome the unpredictability and randomness of the historical process and prevent emergencies by broadening the scope and intensity of social control.

States responded in different ways to emergencies related to the pandemic. In some, states of emergency were declared in 2020, while others sought to undertake activities under existing statutory regulations. Regardless of the procedure, public authorities were granted special powers, which usually resulted in special restrictions on the rights of an individual. Legal solutions were determined by the varying degree of preparation of states’ legal systems to epidemiological challenges. In the first stage of counteracting the state of emergency, they attempted to apply specific regulations to the resulting threat or implemented new statutory or sub-statutory solutions, primarily guided by the criterion of the effectiveness of public authority activities. The adopted strategy was influenced by the experience in the fight against epidemic threats and the conditions of internal policy. It is impossible to notice a simple relationship between resorting to emergency solutions provided for in the constitutions and effectiveness in counteracting a pandemic.

In 2020, no constitutional state of emergency was formally declared in Poland, despite many extraordinary actions taken by the authorities. As a result, fundamental freedoms and human rights have been restricted in Poland, i.e., freedom of economic activity, freedom of assembly, personal freedom, freedom of movement and freedom of religion (Trociuk, 2021). Some legal specialists claimed that such a situation should be referred to as a “material” or “hybrid” state of emergency. Its essence is expressed by the idea that the existence of material conditions of a constitutional state of emergency actualises specific constitutional orders and prohibitions (e.g., prohibition of elections) regardless of the absence of a formal declaration of a state of emergency in accordance with the disposition of Article 228 paragraph 2 of the Polish Constitution. This construction is intended to strengthen the protection of individual rights and freedoms in a situation, where the legislator exceeds the limits of interference formulated in Article 31 paragraph 3 of the Constitution. The construction of the hybrid state of emergency is a creation of legal doctrine and finds no basis in the text of the Constitution. The latter recognises only two states of functioning of the State: ordinary and extraordinary.

It should be noted that in some of the countries discussed, constitutional courts played an important role during the pandemic. The jurisprudence of the constitutional courts is an element balancing the policy pursued by the centres of the executive power and focused primarily on the effectiveness in combating the pandemic. The rulings that came down in the

early months of the pandemic served to draw the line on the use of extraordinary remedies and root them in constitutional axiology.

Finally, attention should also be drawn to Article 15 of the European Convention on Human Rights, which gives the State the possibility to opt out of guaranteeing various explicitly included rights. It can only be done exceptionally and in accordance with the procedure set out in the Convention (paragraphs 1-3).

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